



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
NATIONAL MARINE FISHERIES SERVICE  
Southeast Regional Office  
9721 Executive Center Drive North  
St. Petersburg, Florida 33702

March 17, 2000

Mr. Chris C. Oynes  
Regional Director  
Minerals Management Service  
Gulf of Mexico OCS Region  
1201 Elmwood Park Boulevard  
New Orleans, Louisiana 70123

Dear Mr. Oynes:

Staff of the National Marine Fisheries Service (NMFS) and the Minerals Management Service, Gulf of Mexico OCS Region (MMS) have conferred on Essential Fish Habitat (EFH) consultation requirements of the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA). This letter concerns the preparation of environmental impact statements (EIS) for oil and gas lease sale activities subject to provisions of the National Environmental Policy Act (NEPA). The EFH regulations (50 CFR part 600) specify that after discussion with a Federal action agency, the NMFS may make a finding that an agency's existing consultation/environmental review processes are adequate, or can be modified, to satisfy EFH consultation requirements.

An existing or modified review process must meet three criteria to satisfy the consultation provisions of the regulations. These provisions are: 1) the existing process must provide NMFS with timely notification of actions that may adversely affect EFH; 2) notification must include an assessment of impacts of the proposed action as discussed in Section 600.920 (g); and 3) NMFS must have made a finding pursuant to Section 600.920(e)(3) that the existing process satisfies the requirements of Section 305(b)(2) of the MSFCMA.

#### **Timely Notification**

The NEPA process of the MMS, involving the planning for and preparation of EISs for lease sales in the Gulf of Mexico, provides the NMFS with timely notification of proposed actions. The Gulf of Mexico OCS Region's public review and interagency coordination processes provides 45 days for public review. Final decision on each lease sale is not rendered until all agency and public comments are investigated and addressed.

#### **EFH Assessment**

Our staffs have agreed that draft NEPA documents prepared by MMS could be modified to contain sufficient information to satisfy the requirements in Section 600.920(g). For purposes of an EFH assessment the documents must include: 1) a description of the proposed action; 2) an analysis of



individual and cumulative effects on EFH, Federally managed fisheries, and associated species such as major prey species, including affected life history stages; 3) your agency's views regarding effects; and, 4) proposed mitigation, if applicable. The draft documents may incorporate such information by reference to a NEPA document prepared for a similar or related action, supplemented with any relevant new project specific information. Incorporation of information by reference meets EFH consultation requirements provided the proposed action involves similar adverse impacts to EFH in the same geographic area or similar ecological setting, and the referenced document has been provided to NMFS.

### **Finding**

#### **Consultation Initiation**

The NMFS finds that the Gulf of Mexico OCS Region's NEPA process for evaluating oil and gas lease sale activities can be used to satisfy the consultation requirements of the MSFCMA. Specifically, notification of potential impacts on EFH will occur when MMS sends NMFS a draft NEPA document. The document or cover letter should indicate that the lease sale EIS is intended to initiate EFH consultation, and contain an EFH assessment.

#### **Assessment**

The evaluation of EFH impacts will be addressed in the draft EIS in a section or chapter titled "EFH Assessment" or by reference to companion documents, where appropriate. The EFH assessment also may be presented as a separate request for consultation. The evaluation of lease sale related effects should include both an identification of managed fisheries and their EFH and an assessment of impacts on those resources. The EFH discussion may reference pertinent information on the affected environment and environmental consequences when they are provided in other sections, chapters, or companion documents.

#### **Coordination**

After receiving a draft EIS and EFH consultation request, and within the public comment period specified by the Gulf of Mexico OCS Region, NMFS will submit written comments which will include EFH conservation recommendations, when appropriate. When NMFS identifies EFH concerns, specific measures to minimize or avoid adverse impacts will be contained in a separate section of the response letter. To facilitate the required MMS response (see below), EFH mitigative measures will be specified under a heading within the comment letter entitled "EFH Conservation Recommendations."

Under Section 305(b)(4)(B) of the MSFCMA, Federal action agencies have a statutory requirement to respond in writing within 30 days to EFH recommendations made by the NMFS. If the Gulf of Mexico OCS Region will not be able to complete a signed Finding of No Significant Impact (FONSI), Record of Decision (ROD), or other final action within 30 days of receiving NMFS EFH Conservation Recommendations, MMS should provide NMFS with an interim written response within 30 days. A detailed written response must be provided to the NMFS at least 10 days prior to final action (e.g., signing a FONSI or ROD) being taken.

Higher Level Review

If a Gulf of Mexico OCS Region decision is inconsistent with NMFS EFH conservation recommendations, NMFS will endeavor to resolve outstanding issues at the regional level whenever possible. However, 50 CFR 600.920(j)(2) allows the NOAA Assistant Administrator for Fisheries to request a meeting with a Department of the Interior headquarters official to discuss the proposed action and opportunities for resolving any disagreements.

The overall consultation process is briefly outlined in enclosure 1. Also, to assist you in document preparation, I have included, as enclosure 2, a description of how an EFH assessment might be incorporated in an environmental assessment prepared by the Gulf of Mexico OCS Region.

**Conclusion**

If you agree with the procedures described in this finding, a response letter to that effect is requested. Please contact Mr. Rickey Ruebsamen, the Southeast Region's EFH Coordinator, at 727/570-5317, if you have any questions or wish to discuss this finding.

Sincerely,

A handwritten signature in dark ink, appearing to read "Andreas Mager, Jr.", with a stylized flourish at the end.

Andreas Mager, Jr.  
Assistant Regional Administrator

Enclosures

**Outline of NMFS - MMS Gulf of Mexico OCS Region Process  
for EFH Consultation for Oil and Gas Lease Sales**

- ▶ MMS provides NMFS with a NEPA environmental document
  - ▶ The MMS document indicates that it is intended to initiate EFH consultation
  - ▶ Document includes the required components of an EFH assessment
  - ▶ NMFS is allowed sufficient time to review and comment
- ▶ NMFS provides EFH conservation recommendations, as appropriate, within specified time frames
- ▶ MMS responds to NMFS EFH conservation recommendations
  - ▶ A final response is provided to NMFS within 30 days, or an interim response may be transmitted if final action on the project can not be completed within that time
  - ▶ Final response is provided to NMFS at least 10 days prior to final action/approval (e.g., signing of a FONSI or ROD)
  - ▶ If NMFS recommendations are not accepted, the MMS response includes a detailed explanation of why NMFS recommendations are not being followed and a scientific justification for any disagreements over anticipated EFH impacts
- ▶ NMFS may seek headquarters-level review of those Gulf of Mexico OCS Region decisions contrary to NMFS conservation recommendations

**Recommended Contents of an EFH Assessment  
as Part of a Draft NEPA Document**

- I. The NEPA document transmittal letter or EIS introduction, summary, or abstract should state that the document and information contained therein represent the agency's initiation of EFH consultation. The EFH assessment may be presented as a separate section of the EIS or integrated into the appropriate chapters of the document, as outlined below.
- II. Description of alternatives including the proposed actions - use existing agency format and requirements
- III. Analysis of effects - EFH assessments can be prepared in a letter or report format, provided the required information [see 50 CFR 600.920(g)] is included, or incorporated in a NEPA document in a manner similar to the following:
  - A. The description of fish resources, sensitive coastal environments, and sensitive offshore resources contained in the chapter describing the affected environment should be expanded to specifically identify Federally managed fisheries and EFH in the lease sale area. As part of the description of OCS marine and adjacent estuarine habitats, the text should be supplemented to identify which habitats have been designated as EFH by either the Gulf of Mexico Fishery Management Council or NMFS. Habitat Areas of Particular Concern also should be identified for the project area.
  - B. The discussion of environmental consequences portion of the document should reference descriptive information contained elsewhere in the document and include an evaluation of project and cumulative effects, MMS's evaluation of those effects, and any mitigation proposed. The scope of this section should be determined by the anticipated level of impact.
- IV. Federal agency views - the Gulf of Mexico OCS Region's views regarding EFH impacts can be specified as a part of the "**EFH Assessment**" and/or included and highlighted in the section of the environmental document which presents the agency's conclusions about the subject action.
- V. Proposed mitigation - if mitigation is appropriate and proposed, it should be identified in the "**EFH Assessment**" and described in detail in the section of the environmental document reserved for such discussion. The discussion of mitigation of EFH impacts should be presented separately from the discussion of other proposed mitigative measures.